

Appln No. 10/622,213

Amdt date June 17, 2005

Reply to Office action of March 17, 2005

#### **REMARKS/ARGUMENTS**

Claims 1-26 are pending in the present application, of which claims 3, 4 and 7 have been withdrawn from consideration. Claims 1, 13, 14 and 18 are independent. Claims 1, 2, 5, 6, 10-14, 17, 18 and 23 have been amended. New claims 24-26 have been added. Applicants respectfully request reconsideration and allowance of claims 1, 2, 5, 6, 8-12 and 14-23 in addition to the allowance of claim 13, which is already indicated as containing allowable subject matter. Applicants further request consideration and allowance of newly added claims 24-26.

#### **I. Amendment to the Specification**

The specification has been amended to update the filing information of a related patent application. No new matter has been added.

#### **II. Objection to the Drawings under 37 CFR § 1.83(a)**

The drawings have been objected to under 37 CFR § 1.83(a) as allegedly not showing every feature of the invention specified in the claims. Regarding claim 16, the Examiner states that "the spa cover is moved downward behind the spa." However, claim 16 actually recites, in a relevant portion, "the spa cover has not been moved downward behind the spa." (Emphasis Added). Claim 17 has been amended to recite, in a relevant portion, "the spa cover in the fully open position is completely removed from the top of the spa without moving downward." Both of these features (of claims 16 and 17) are illustrated in FIG. 8, for example. Hence, no drawing changes

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are required, and no corrected drawings are submitted herewith. In view of the above, applicants request that the objection to the drawings be withdrawn.

**III. Rejection of Claims 1, 2, 5, 6 and 8-13 under 35 U.S.C. § 112, second paragraph**

Claims 1, 2, 5, 6 and 8-13 have been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Claims 1, 2, 5, 6 and 10-13 have been amended as suggested by the Examiner. Claims 8 and 9, which depend from claim 1, do not appear to require a similar amendment. Therefore, applicants request that the rejection of claims 1, 2, 5, 6 and 8-13 under 35 U.S.C. § 112, second paragraph, be withdrawn.

**IV. Rejection of Claims 1, 2, 5, 6, 8, 9, 14, 16 and 17 under 35 U.S.C. § 103(a)**

Claims 1, 2, 5, 6, 8, 9, 14, 16 and 17 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,950,252 ("Fettes"). In rejecting claim 1, the Examiner appears to combine the embodiments in FIGs. 1-2 and 15-16 of Fettes. Applicants do not believe that these embodiments should be combined to reject the claims of the present application. By way of example, the springs 32 of FIG. 1 are disposed between the lifting arm 22 and the lag eye bolt 34 near the bottom of the spa (and not between a "supporting arm" and "a mounting bracket disposed near a top of the spa"). On the other

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hand, the springs 32 in FIGs. 15 and 16 are near the upper portion of the spa.

Further, it can be seen in FIG. 2 of Fettes that the springs 32 are oriented substantially vertically (i.e., perpendicular to the ground) when the spa cover 16 is in a fully open position. On the other hand, claim 1 of the present application recites, in a relevant portion, "the spring member is adapted to form an angle of less than approximately 45 degrees with respect to the top of the spa when the spa cover is in the fully open position." Also, claim 14 recites, in a relevant portion, "the spring member forms an angle of less than approximately 45 degrees with respect to the top of the spa when the spa cover is in the fully open position."

Applicants do not understand how the two vastly different embodiments in FIGs. 1-2 and FIGs. 15-16 of Fettes can be combined together to practice the present invention, nor does Fettes teach or suggest any such combination. Since there is no teaching or suggestion in Fettes to combine these two dissimilar embodiments, applicants do not believe that the rejection of claim 1 is proper.

In other words, applicants do not believe that the embodiments disclosed in FIGs. 1-2 and FIGs. 15-16 of Fettes can be modified as suggested by the Examiner without changing the principle of operation of those embodiments, since the suggested combination of the embodiments of FIGs. 1-2 and FIGs. 15-16 of Fettes would require a substantial reconstruction and redesign of the elements shown in Fettes as well as a change in the basic principle under which the embodiments in FIGs. 1-2 and FIGs. 15-

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16 of Fettes were designed to operate. (See MPEP § 2143.01)

In addition, it can be seen from FIGs. 1 and 2 of Fettes that the lifting arm 22 (i.e., the extension arm member 26 thereof) is rotatably coupled to the spa cover 16 at the hinge engaging bar 70. By way of example, in FIG. 1, the extension arm member 26 is arranged almost parallel to the sides of the two halves 18 and 20 of the spa cover 16. However, as can be seen in FIG. 2, the extension arm member 26 forms an angle with respect to the two halves 18 and 20 of the spa cover 16, indicating that the lifting arm 22 has now rotated with respect to the spa cover 16.

Claim 1 recites, in a relevant portion, "the support arm is adapted to be fixedly attached to the spa cover to prevent relative rotational movement between the support arm and the spa cover." Claim 14 recites, in a relevant portion, "the support arm is fixedly attached to the spa cover to prevent relative rotational movement between the support arm and the spa cover."

Since Fettes does not teach or suggest such fixed attachment between the spa cover and the support arm, and instead teaches a relative rotational movement between the lifting arm 22 and the spa cover 16, applicants further submit that claims 1 and 14 are patentably distinguishable over Fettes. In view of the foregoing amendments and remarks, applicants request that the rejection of claims 1 and 14 be withdrawn and that they be allowed.

Since claims 2, 5, 6, 8, 9, 16 and 17 respectively depend from claims 1 and 14, they incorporate all the terms and limitations of claims 1 and 14, respectively, in addition to

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other limitations, which together further patentably distinguish them over the cited references. Therefore, applicants request that the rejection of claims 2, 5, 6, 8, 9, 16 and 17 be withdrawn and that they be allowed.

**V. Rejection of Claims 10-12, 15, 18 and 20-23 under 35 U.S.C. § 103(a)**

Claims 10-12, 15, 18 and 20-23 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Fettes in view of U.S. Patent No. 6,795,984 ("Brady").

Since claims 10-12 and 15 respectively depend, directly or indirectly, from claims 1 and 14, they incorporate all the terms and limitations of claims 1 and 14, respectively, in addition to other limitations, which together further patentably distinguish them over the cited references. Therefore, applicants request that the rejection of claims 10-12 and 15 be withdrawn and that they be allowed.

In rejecting claims 18 and 20-23, the Examiner states that "the method as claimed would be inherent during the normal use and operation of the modified Fettes device" without providing any analysis on which elements of these claims are taught or suggested by the cited references. Applicants respectfully traverse because of at least the following reasons.

By way of example, claim 18 recites, "inserting a screw and an anchor engaging the screw through the hole on said at least one metal plate into the spa cover." (Emphasis Added). Applicants do not see any inserting of a screw and an anchor engaging the screw through the hole in Fettes and Brady, nor

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does the Examiner provide any guidance as to where in the cited references that this feature may be found. Since Fettes and Brady do not teach or suggest at least this feature of claim 18, applicants respectfully request that the rejection of claim 18 be withdrawn and that it be allowed.

Since claims 19<sup>1</sup>-23 depend, directly or indirectly, from claim 18, they incorporate all the terms and limitations of claim 18, in addition to other limitations, which together further patentably distinguish them over the cited references. Therefore, applicants request that the rejection of claims 19-23 be withdrawn and that they be allowed.

#### **VI. Allowable Subject Matter of Claim 13<sup>2</sup>**

The Examiner has indicated that claim 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, 2nd paragraph, set forth in the Office Action and to include all of the limitations of the base claim and any intervening claims. Claim 13 has been further amended to delete "at a vertical offset from the axis of rotation when the spa cover is in the fully closed position," which applicants do not believe is an essential limitation of claim 13. Hence, applicants believe claim 13 is still allowable without this limitation. Since

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<sup>1</sup> Since claim 19 has not been specifically rejected, applicants believe claim 19 contains allowable subject matter because of at least the reasons similar to the reasons for the allowability of claim 13. However, claim 19 has not been rewritten in allowable form because applicants believe that claims 18-23 are clearly allowable without any amendments.

<sup>2</sup> While the cover page of the Office Action indicates rejection of claim 13, the Examiner indicates its allowability in page 8, paragraph 8 of the Office Action.

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claim 13 has been substantially amended as required by the Examiner, applicants request that claim 13 be allowed.

**VII. Newly Added Claims 24-26**

Since the newly added claims 24-26 depend, respectively, from claims 1, 14 and 18, they incorporate all the terms and limitations of claim 1, claim 14 or claim 18, in addition to other limitations, which further patentably distinguish them over the cited references. Therefore, applicants request allowance of claims 24-26.

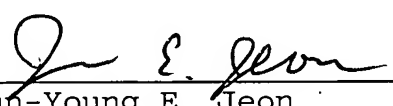
**VIII. Concluding Remarks**

In view of the foregoing amendments and remarks, applicants respectfully request an early issuance of a patent with claims 1, 2, 5, 6 and 8-26. If there are any remaining issues that can be addressed over the telephone, the Examiner is invited to call applicants' attorney at the number listed below.

Respectfully submitted,

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